

In Title 3, Division 4, Chapter 3, amend Section 3437 to read:

Section 3437. European Grapevine Moth Interior Quarantine.

A quarantine is established against the following pest, its hosts and possible carriers.

(a) Pest. European Grapevine Moth (*Lobesia botrana*).

(b) Area Under Quarantine.

(1) In Fresno County. [Continued]

(2) In Mendocino County. [Continued]

(3) In the County of Merced. [Continued]

(4) In Lake, Napa, Solano and Sonoma counties. Beginning at the intersection of Brack Rd and Chemise Rd; then, starting easterly along Chemise Rd to its intersection with 38.647689 latitude and -122.948557 longitude; then, northeasterly along an imaginary line to its intersection with Jochinsen Rd and Wine Creek Rd; then, northeasterly along Wine Creek Rd to its intersection with Grape Creek; then, starting northeasterly along said creek to its intersection with W Dry Creek Rd; then, starting northeasterly along said road to its intersection with an unnamed road at 38.661056 latitude and -122.940972 longitude; then, northeasterly along said road to its intersection with Dry Creek; then, southeasterly along said creek to its intersection with an unnamed road at 38.659998 latitude and -122.936563 longitude; then, northeasterly along said road to its intersection with Dry Creek Rd; then, northwesterly along said road to its intersection with 38.668829 latitude and -122.932543 longitude; then, northeasterly along an imaginary line to its intersection with Petersen Creek at 38.689261 latitude and -122.902306 longitude; then, starting southeasterly along said creek to its intersection with Geysersville Av; then, southeasterly along said avenue to its intersection with W C Meyer Rd; then, easterly along said road to its intersection with an unnamed road; then, northerly along said road to its intersection with the Russian River; then, starting southeasterly along said river to its intersection with an unnamed road at 38.682033 latitude and -122.853146 longitude; then, northeasterly along said road to its intersection with State Hwy 128; then, southeasterly along said road to its intersection with Geysers Rd; then, starting northeasterly along said road to its intersection with Red Winery Rd; then, starting southeasterly along said road to its intersection with Squibb Rd; then,

northeasterly along said road to its northeastern most point; then, southeasterly along an imaginary line to its intersection with Pine Flat Rd and Deer Creek; then, northeasterly along an imaginary line to its intersection with the northwestern most point of Bluegum Creek; then, starting southeasterly along said creek to its intersection with McDonnell Creek; then, starting southeasterly along said creek to its intersection with Maacama Creek then, starting southerly along said creek to its intersection with State Hwy 128; then, starting northeasterly along State Hwy 128 to its intersection with Bechaud Rd; then, northeasterly along Bechaud Rd to its northeastern most end; then, northeasterly along an imaginary line to its intersection with the westernmost beginning of Ida Clayton Rd; then, starting easterly along Ida Clayton Rd to its intersection with 38.675388 latitude and -122.656858 longitude; then, southeasterly along an imaginary line to its intersection with Kellogg Creek and the Robert Louis Stevenson State Park boundary line; then, starting northerly along the Robert Louis Stevenson State Park boundary line to its intersection with the Sonoma County boundary line; then, starting southeasterly along the Sonoma County boundary line to its intersection with the Napa County boundary line; then, northeasterly along the Napa County boundary line to its intersection with State Hwy 29; ~~then, starting southerly along State Hwy 29 to its intersection with Livermore Rd; then, southeasterly along an imaginary line to its intersection with the end of Aetna Springs Rd; then, southeasterly along an imaginary line to the westernmost beginning of Summit Lake Dr; then, starting southeasterly along Summit Lake Dr to its intersection with 38.609410 latitude and -122.475560 longitude; then, southeasterly along an imaginary line to its intersection with Ink Grade Dr at 38.602280 latitude and -122.452271 longitude; then, starting southeasterly along Ink Grade Dr to its intersection with Howell Mountain Rd; then, starting northwesterly along Howell Mountain Rd to its intersection with Chiles Pope Valley Rd; then, starting northeasterly along Chiles Pope Valley Rd to its intersection with Maxwell Creek; then, starting northerly along Maxwell Creek to its intersection with Pope Creek; then, starting southeasterly along Pope Creek~~ then, northeasterly along an imaginary line to its intersection with the westernmost end of Oak Hill Rd; then, northeasterly along Oak Hill Rd to its intersection with Oat Hill Rd; then, northerly along Oat Hill Rd to its intersection with Butts Canyon Rd; then, starting northerly along Butts Canyon Rd to its intersection with Guenoc Rd; then, northeasterly

along Guenoc Rd to its intersection with Bucksnot Creek; then, southeasterly along Bucksnot Creek to its intersection with 38.729896 latitude and -122.514910 longitude; then, easterly along an imaginary line to its intersection with Butts Canyon Rd at 38.730001 latitude and -122.514564 longitude; then, starting northeasterly along Butts Canyon Rd to its intersection with 38.748925 latitude and -122.453303 longitude; then southeasterly along an imaginary line to its intersection with Putah Creek at 38.705648 latitude and -122.384177 longitude; then starting southerly along Putah Creek to its intersection with the Lake Berryessa Recreation Area boundary line; then, starting southerly along the Lake Berryessa Recreation Area boundary line to its intersection with Steele Canyon Rd at 38.491657 latitude and -122.196591 longitude; then, starting southeasterly along Steele Canyon Rd to its intersection with Lakeshore Dr; then, southwesterly along an imaginary line to its intersection with Capell Valley Rd and 38.455066 latitude and -122.209986 longitude; then, starting southeasterly along Capell Valley Rd to its intersection with Monticello Rd; then, starting southwesterly along Monticello Rd to its intersection with Circle Oaks Dr; an imaginary line to its intersection with the Lake Berryessa Recreation Area boundary line and Wragg Canyon Rd; then, starting southeasterly along Wragg Canyon Rd to its intersection with State Hwy 128; then, starting southeasterly along State Hwy 128 to its intersection with Old Suisun Knoxville Rd; then, southeasterly along an imaginary line to its intersection with Blue Ridge Rd and Gates Canyon Rd; then, starting easterly along Gates Canyon Rd to its intersection with Pleasants Valley Rd; then starting southeasterly along Pleasants Valley Rd to its intersection with Foothill Dr; then, starting southeasterly along Foothill Dr to its intersection with Alamo Dr; then, starting southeasterly along Alamo Dr to its intersection with Peabody Rd; then, starting southerly along Peabody Rd to its intersection with Air Base Pkwy; then, starting westerly along Air Base Pkwy to its intersection with the boundary of Fairfield City at 38.272382 latitude and -121.975093; then, starting southerly along said boundary to its intersection with Petersen Rd; then, westerly along said road to its intersection with Lawler Ranch Pkwy; then, starting southerly along said parkway to its intersection with State Hwy 12; then, starting southeasterly along said highway to its intersection with Scally Rd; then, southwesterly along an imaginary line to its intersection with Grizzly Island Rd and the northern

shoreline of Montezuma Slough; then, starting westerly along said shoreline to its intersection with Grizzly Bay; then, southwesterly along Grizzly Bay to its intersection with western shore of Suisun Bay; then, starting southerly along the western shore of Suisun Bay to the Carquinez Strait; then, starting southwesterly along the Carquinez Strait to San Pablo Bay; then, starting northerly along the shore of San Pablo Bay to the Petaluma River; then, starting northwesterly along the Petaluma River to its intersection with Adobe Creek; then, starting easterly along Adobe Creek to its northernmost end; then, northeasterly along an imaginary line to the southwestern most point of the Glen Ellen City boundary line; then, northwesterly along an imaginary line to the southernmost end of South Fork Matanzas Creek; then, starting southwesterly along South Fork Matanzas Creek to its intersection with Sonoma Mountain Rd; then, starting westerly along Sonoma Mountain Rd to its intersection with Pressley Rd; then, northwesterly along an imaginary line to its intersection with the southernmost end of Hidden Oaks Rd; then, northwesterly along an imaginary line to its intersection with the southernmost end of Hidden Acres Rd; then, northerly along Hidden Acres Rd to its intersection with Hidden Springs Rd; then, starting northwesterly along Hidden Springs Rd to its intersection with Peracca Rd; then, westerly along Peracca Rd to its intersection with Grange Rd; then, starting northerly along Grange Rd to its intersection with Matanzas Creek; then, starting westerly along Matanzas Creek to its intersection with Bennett Valley Rd; then, starting northwesterly along Bennett Valley Rd to its intersection with Yulupa Ave; then, starting northwesterly along Yulupa Ave to its intersection with Bethards Dr; then, starting northeasterly along Bethards Dr to its intersection with Summerfield Rd; then, starting northerly along Summerfield Rd to its intersection with Montgomery Dr; then, northeasterly along Montgomery Dr to its intersection with Mission Blvd; then, starting northwesterly along Mission Blvd to its intersection with Montecito Blvd; then, starting southwesterly along Montecito Blvd to its intersection with Fountain Grove Pkwy; then, starting northwesterly along Fountain Grove Pkwy to its intersection with Industrial Dr; then, starting westerly along Industrial Dr to its intersection with Cleveland Ave; then, starting southeasterly along Cleveland Ave to its intersection with Piner Rd; then, starting westerly along Piner Rd to its intersection with Olivet Rd; then, northerly along Olivet Rd to its intersection with W

Olivet Rd; then, westerly along W Olivet Rd to its intersection with Oakwild Ln; then, northerly along Oakwild Ln to its intersection with Denner Ranch Rd; then, westerly along Denner Ranch Rd to its intersection with Denner Rd; then, starting northerly along Denner Rd to its intersection with River Rd; then, starting westerly along River Rd Marlow Rd; then, starting southerly along Marlow Rd to its intersection with Stony Point Rd; then, starting southerly along Stony Point Rd to its intersection with State Hwy 12; then, southwesterly along State Hwy 12 to its intersection with N Wright Rd; then, southerly along N Wright Rd to its intersection with S Wright Rd; then, southerly along S Wright Rd to its intersection with Ludwig Av; then, starting westerly along Ludwig Av to its intersection with Llano Rd; then, starting northwesterly along Llano Rd to its intersection with State Hwy 12; then, southwesterly along State Hwy 12 to its intersection with Petaluma Ave; then, southeasterly along Petaluma Av to its intersection with Gravenstein Av; then, southeasterly along Gravenstein Av to its intersection with Lynch Rd; then, starting westerly along Lynch Rd to its intersection with Pleasant Hill Rd; then, northwesterly along Pleasant Hill Rd to its intersection with Pillow Rd; then, southwesterly along Pillow Rd to its westernmost end; then, southwesterly along an imaginary line to its intersection with the easternmost end of Starlight Ln; then, southwesterly along Starlight Ln to its intersection with Watertrough Rd; then, northwesterly along an imaginary line to its intersection with Benvenuto Ln; then, starting southwesterly along Benvenuto Ln to its intersection with Spring Hill School Rd; then, westerly along Spring Hill School Rd to its intersection with Bodega Hwy; then, starting southwesterly along Bodega Hwy to its intersection with Jonive Rd; then, starting northwesterly along Jonive Rd to its intersection with Occidental Rd; then, starting northwesterly along Occidental Rd to its intersection with Facendini Ln; then, starting northwesterly along Facendini Ln to its intersection with Tanuda Rd; then, starting northerly along Tanuda Rd to its intersection with Harrison Grade Rd; then, starting easterly along Harrison Grade Rd to its intersection with Stoetz Ln; then, starting northwesterly along Stoetz Ln to its northernmost end; then, northeasterly along an imaginary line to its intersection with Greenwood Ln and Green Valley Rd; then, starting westerly along Green Valley Rd to its intersection with Pocket Canyon Rd; then, starting northwesterly along Pocket Canyon Rd to its intersection with Old Fellows Park Rd;

then, starting northeasterly along Old Fellows Park Rd to its intersection with the Russian River; then, starting northeasterly along the Russian River to its intersection with River Rd; then, starting southwesterly along River Rd to its intersection with McPeak Rd; then, starting northwesterly along McPeak Rd to its intersection with Sunnyside Dr; then, northeasterly along an imaginary line to its intersection with Mount Jackson Resort Rd at 38.538271 latitude and -122.941874 longitude; then, starting southwesterly along Mount Jackson Resort Rd to its intersection with Sweetwater Springs Rd; then, starting northwesterly along Sweetwater Springs Rd to its intersection with McCray Ridge Rd; then, northeasterly along an imaginary line to its intersection with Cloud 8 Rd and Palmer Creek Rd; then, starting northeasterly along Palmer Creek Rd to its intersection with Mill Creek Rd; then, starting westerly along Mill Creek Rd to its intersection with Soward Ranch Rd; then, northerly along an imaginary line to the point of the beginning.

(c) [no change]

(d) [no change]

Note: Authority: Sections 407 and 5322, Food and Agricultural Code

Reference: Sections 407, 5322, 5761, 5762 and 5763, Food and Agricultural Code

June 30, 2010

FINDING OF EMERGENCY

Readoption

The Secretary of the Department of Food and Agriculture has determined that an emergency exists due to the existence of *Lobesia botrana*, European Grapevine Moth (EGVM), in the counties of Fresno, Lake, Mendocino, Merced, Napa, Solano and Sonoma.

Emergency Rulemaking Procedures

“Emergency’ means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare,” Government Code Section 11342.545. If a state agency makes a finding that the adoption of a regulation is necessary to address an emergency, the regulation may be adopted as an emergency regulation. Government Code Section 11346.1(b)(1).

In this document the Department is providing the necessary specific facts demonstrating the existence of an emergency and the need for immediate action to prevent serious harm to the general welfare of the citizens of California, pursuant to Government Code Section 11346.1(b)(2).

The information contained within this finding of emergency also meets the requirements of Government Code Sections 11346.1 and 11346.5. The Department met the requirements of Section 11346.5 in its emergency filing, OAL No. 2010-0624-01E which is incorporated by reference. Section 11346.1(h) provides that the Office of Administrative Law may approve up to two readoptions, each for a period not to exceed 90 days if the adopting agency has made substantial progress towards completing the rulemaking process.

“Specific actions necessary to prevent or mitigate an emergency” are exempt from the California Environmental Quality Act (CEQA). Public Resources Code Section 21080(b)(4). “Emergency’

means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.” Public Resources Code Section 21060.3.

Evidence of Emergency

Due to multiple finds of EGVM, the Department expanded the regulated areas in Napa and Sonoma counties and created a new regulated area in Lake County by amending Section 3437, Title 3, California Code of Regulations (3CCR) as an emergency action, effective July 1, 2010 (Office Of Administrative Law (OAL) File No. 2010-0624-06E).

The EGVM poses a clear and imminent danger to California’s agricultural industry. Should the Department not continue these emergency actions by completing the regular noticed rulemaking action within 180 days of their respective effective dates, the emergency regulations would be repealed by operation of law. This could allow the EGVM to cause catastrophic losses to, not only California’s table and wine-grape industries, but the industries which rely on the regions’ scenic beauty and international reputation as a tourist destination.

Necessity for Readoption

In order to meet the 180-day deadline, the Certificate of Compliance for this emergency action would be due to OAL by December 28, 2010, meaning that the Department would have had to file “Notice” package by October 19. However, the Department is still in the process of collecting the required economic impact information prior to submitting the Notice. Due to the large number of businesses affected by this regulation, collecting this information is a lengthy process. The Department expects to have this information collected and file the Notice packages by mid-November.

The specific facts and information relied upon which originally established these emergency actions have not changed and the emergency still exists. Therefore, the Department is proposing

to incorporate by reference and readopt OAL File No. 2010-0624-01E to avoid severe economic losses to agriculture and losses in the State's revenue.

The Secretary amended this regulation pursuant to the authority in Food and Agricultural Code (FAC) Section 407, "the director may adopt such regulations as are reasonably necessary to carry out the provisions of this code which he is directed or authorized to administer or enforce," and FAC Section 5322, "the director may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in his or her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC Section 5321."

Additionally, FAC Section 401.5 states, "the department shall seek to protect the general welfare and economy of the state and seek to maintain the economic well-being of agriculturally dependent rural communities in this state" and Section 403 states, "the department shall prevent the spread of injurious insect pests."

Under Section 14.5 of the State of California Emergency Plan, dated July 1, 2009, the Department is responsible for coordinating integrated federal, state and local preparedness for response to, recovery from and mitigation of plant diseases and pests and overseeing the control and eradication of outbreaks of harmful or economically significant plant pests and diseases. The Department is also charged with leading the administration of programs to detect, control and eradicate pests affecting plants.

Additionally, the USDA cannot regulate less than the entire State unless the State has a quarantine regulation which is substantially the same as what the federal quarantine requirements are or will be. Should USDA quarantine all of California, it would have serious repercussions on our ability to export any EGVM host material to other states or countries. For instance, both Canada and Mexico are major trading partners with California. Canada has already prohibited the

importation of grapes and olives, and placed restrictions on stonefruit, kiwi, persimmon, pomegranate and berries from EGVM areas in California. Mexico has prohibited the importation of any host material from EGVM counties. Therefore, it is necessary to amend this regulation as an emergency action.

EGVM are found in southern Asia, Europe, North Africa, Anatolia, the Caucasus and in South America (Chile where it was first identified in 2008). Adult EGVM are 6 to 8 mm long with a wingspan of about 10 to 13 mm. However, their size is greatly affected by larval food quality. The first flight of adults occurs in spring when daily average air temperature is above a minimal threshold temperature of 10°C for 10 to 13 days. High temperature (over 20°C) and low humidity (40-70% relative humidity) provide optimal conditions for moth activity. The second flight period begins in summer. Adults may be hard to discover during the day and may be noticed only when they take flight after being disturbed. Within a day or two of mating, females begin to oviposit on the blossoms, leaves, and tender twigs of grapevines. The female lays 300 or more eggs at a rate of 35 per day. First generation eggs are laid on the flower buds or pedicels of the vine while second generation eggs are laid on individual grapes. Eggs hatch in seven to eleven days in spring and three to five days in summer.

The number of generations in a given area is fixed by photoperiod together with temperature. The moth achieves two generations in northern cold areas and usually three generations in southern temperate areas, but as many as five generations have been reported.

First generation larvae feed on bud clusters or flowers and spin webbing around them before pupating inside the web or under a rolled leaf. If heavy flower damage occurs during the first moth generation, the affected flowers will fail to develop and yield will be low. Second generation larvae enter the grapes and feed before pupating inside the grape. Larvae of the third generation, the most damaging, feed on ripening grapes, migrating from one to another and spinning webs. When berries are a little desiccated, the larvae penetrate them, bore into the pulp, and remain protected by the berry peel. Larvae secure the pierced berries to surrounding ones by

silk threads in order to avoid falling. Each larva directly damages several berries (one to six), but if the conditions are suitable for fungal or acid rot development, a large number of surrounding berries may also be affected. The third generation larvae leave the fruit and seek shelter under the bark, among dead leaves, or between clods of earth, where they pupate before overwintering. Larvae develop in four to five weeks in spring and two to three weeks in summer. Pupation lasts nine to twelve weeks in spring, five to seven days in summer, and up to six months in winter.

The EGVM is a serious pest in warm vine-growing countries. Damage by EGVM makes berries attractive to other insects and predisposes the fruit to fungal infection. Larval boring may promote a number of fungal rots, including *Aspergillus*, *Alternaria*, *Rhizopus*, *Cladosporium*, *Penicillium* and especially, grey rot caused by *Botrytis cinerea*. Loss of up to one-third of the vintage has been reported in areas of the Soviet Union, Syria and Yugoslavia. Losses in Israel sometimes reach 40 to 50 percent among table grapes and up to 80 percent for wine grapes. Further loss is due to the time and labor spent in cleaning the grape bunches. When infestations are heavy, work days spent in cleaning the fruit account for 30 to 40 percent of the time of those involved in harvesting.

Losses in grapes produced for raisins and table grapes are expected to be higher than for wine grapes. Additionally, fresh table grapes will likely face restrictions imposed by some trading partners.

California's 844,000 acres of grapes (526,000 acres of wine grapes, 93,000 acres of table grapes and 225,000 acres of raisin-type grapes) leads the nation in grape production with 89% of the total. In 2007, grapes were the number two commodity in the state, based on a dollar value of \$3.08 billion dollars, and were among the top three commodities produced in 15 California counties. The retail value of California was valued at \$16.5 billion in 2006. Additionally, EGVM is known to feed on close relatives of plants listed as threatened or endangered in the United States and presents a potential threat to perhaps 24 species, some of which are known to occur

only in California. To protect this source of revenue and the environment, California must do everything possible to prevent the spread of EGVM in the State.

Project Description

This emergency action expanded and/or created new quarantine areas for EGVM. The effect of the amendment to the regulations was to establish authority for the State to perform quarantine activities against EGVM in these additional quarantine areas.

As in all quarantine activities, the intended effect of this quarantine is to prevent the human-assisted artificial spread of the pest. Artificial spread, such as moths hitchhiking on equipment, clothing or the movement of infested plant material has the potential to spread the pest rapidly throughout the state, whereas the natural spread of the pest is gradual.

Any quarantine actions undertaken by the Department will be in cooperation and coordination with the USDA and the affected county agricultural commissioners. It is immediately necessary to continue to implement quarantine actions in order to prevent the artificial spread of EGVM to the noninfested areas of California.

The Department relied upon, and is incorporating by reference, the following documents for this proposed rulemaking action:

OAL File No. 2010-0624-06E

Authority and Reference Citations

Authority: Sections 407 and 5322, Food and Agricultural Code.

Reference: Sections 407 and 5322, Food and Agricultural Code.

Informative Digest

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread and the feasibility of its control or eradication (FAC Section 5321).

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322).

Section 3437. European Grapevine Moth Interior Quarantine.

This emergency regulatory action, effective July 1, 2010, expanded the existing regulated quarantine areas for the EGVM in Napa County by approximately 99 square miles, in Sonoma County by approximately 62 square miles, and created a new regulated quarantine area in Lake County of approximately 19 square miles, for a total of approximately 1,796 square miles.

The effect of these changes to the regulations was to establish authority for the State to perform quarantine activities against EGVM in these additional quarantine areas.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3437 does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Fresno, Mendocino, Napa, Solano and Sonoma County Agricultural Commissioners requested that these changes to the regulation be made.

Cost Estimate

The Department has also determined that the regulations will involve no additional costs or savings to any state agency because initial funds for state costs are already appropriated, no

nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code and no costs or savings in federal funding to the State.